

REMARKS

This application has been reviewed in light of the non-final Office Action mailed on March 4, 2009. Claims 1-7 are pending in the application with Claims 1, 4, 6, and 7 being in independent form. By the present amendment, Claims 1, 4, 6, and 7 have been amended. Support for the amendments can be found throughout the specification, such as in paragraph [0026]. No new matter or issues are believed to be introduced by the amendments.

Claim 4 was rejected under 35 U.S.C. §101 because the claimed invention was directed to non-statutory subject matter. Claim 4, as presented herein, is believed to be in compliance with the requirements of §101. Accordingly, withdrawal of the above §101 rejection is respectfully requested.

Claims 1-7 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the enablement requirement. Applicant respectfully submits that the claim language cited by the Examiner is not new matter, since the claim language is adequately described at page 2, lines 23-25, page 3, lines 1-2, and page 7, lines 16-20 of the present disclosure. However, Applicant has deleted this claim language to expedite the prosecution of the present application. Therefore, Claims 1-7, as presented herein, are believed to be in compliance with the requirements of §112, first paragraph. Accordingly, withdrawal of the §112, first paragraph rejection is respectfully requested.

Claims 6-7 were rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 6-7, as presented herein, are believed to be in compliance with the requirements of §112, second paragraph. Accordingly, withdrawal of the §112, second paragraph rejection is respectfully requested.

Claims 1, 3, and 4 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tong et al. (U.S. Patent No. 6,744,744) in view of Dotsch et al. (U.S. Patent No. 6,513,140) and Zhang (U.S. Patent No. 6,968,494).

Claim 1, as amended herein, recites, *inter alia*, as follows:

“...a control unit for dynamically selecting a coding rate that is to be used by the encoder, the coding rate being dependent on a **level of protection against errors;**”
(emphasis added)

The applied combination of Tong, Dotsch, and Zhang fail to disclose or suggest “...the coding rate being dependent on a level of protection against errors,” as recited in amended independent Claim 1.

As understood by Applicant, Tong appears to disclose that the coding rate is determined by matching the coding rate to the radio communication rate. Dotsch appears to disclose a coding rate R_C that is determined by dividing the block size N by a number K of coded binary signals. Zhang appears to disclose that the coding rate is determined by the signal to noise ratio or bit error rate of the transmission channel. Neither Tong, Dotsch nor Zhang disclose the coding rate being dependent on a level of protection against errors.

Accordingly, the withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claim 1 and allowance thereof is respectfully requested.

Independent Claim 4 recites features not recited by independent Claim 1. Applicant therefore respectfully submits that the Examiner state where in the cited prior art references these features of Claim 4, which are not recited by Claim 1, are taught. Nonetheless, independent Claim 4 includes some common elements as to those of Claim 1 which are argued above as being patentable over the cited prior art references. Therefore, independent Claim 4 is allowable over

the prior art of record for at least the same reasons presented above for the patentability of independent Claim 1.

Dependent Claim 3 is allowable over the prior art of record for at least the same reasons presented above for the patentability of independent Claim 1. Accordingly, the withdrawal of the rejection under 35 U.S.C. §103(a) with respect to dependent Claim 3 and allowance thereof is respectfully requested.

Claims 2 and 5 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tong in view of Dotsch and Zhang as applied to Claims 1 and 5 above, and further in view of Farrell et al. (U.S. Patent No. 6,643,331). The rejection is respectfully traversed.

Dependent Claims 2 and 5, are allowable over the prior art of record for at least the same reasons presented above for the patentability of independent Claims 1 and 4. Farrell et al. does not address the deficiencies of Tong, Dotsch and Zhang with respect to Applicant's independent Claims 1 and 4. Accordingly, the withdrawal of the rejection under 35 U.S.C. §103(a) with respect to dependent Claims 2 and 5 and allowance thereof are respectfully requested.

Claims 6 and 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shiu et al. (U.S. Patent No. 6,798,826) in view of Abe et al. (U.S. Patent No. 6,272,123) and Tong.

Claim 6, as amended herein, recites, *inter alia*, as follows:

“...a control unit for dynamically indicating a coding rate that has been used for encoding the transmission signal, the coding rate being dependent on a **level of protection against errors**...” (emphasis added)

The applied combination of Shiu, Abe and Tong fail to disclose or suggest “...a control unit for dynamically indicating a coding rate that has been used for encoding the transmission signal, the coding rate being dependent on a level of protection against errors,” as recited in amended independent Claim 6.

At page 13 of the present Office Action, the Examiner admitted that Shiu does not teach “a control unit for dynamically indicating a coding rate that has been used for encoding the transmission signal.” The Examiner relied on Abe to teach such feature.

As understood by Applicant, Abe provides for a CDMA transmitter-receiver capable of varying the transmission rate of the voice encoding on a sample by sample basis (Abstract). Abe refers to a variable rate for encoding. However, Abe does not teach or suggest coding rate being dependent on a level of protection against errors, as recited in the amended independent Claims. Further, as previously discussed, Tong appears to disclose that the coding rate is determined by matching the coding rate to the radio communication rate and not based on a level of protection against errors.

Accordingly, the withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claim 6 and allowance thereof is respectfully requested.

Independent Claim 7 recites features not recited by independent Claim 6. Applicant therefore respectfully submits that the Examiner state where in the cited prior art references these features of Claim 7, which are not recited by Claim 6, are taught. Nonetheless, independent Claim 7 includes some common elements as to those of Claim 6 which are argued above as being patentable over the cited prior art references. Therefore, independent Claim 7 is allowable over the prior art of record for at least the same reasons presented above for the patentability of independent Claim 6.

In view of the foregoing amendments and remarks, it is respectfully submitted that all Claims presently pending in the application, namely, Claims 1-7, are believed to be in condition for allowance.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to contact the undersigned.

Respectfully submitted,

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